

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

|                        |   |                            |
|------------------------|---|----------------------------|
| HAROLD V. DAVIS        | § |                            |
| v.                     | § | CIVIL ACTION NO. 6:04cv500 |
| DR. KUYKENDALL, ET AL. | § |                            |

MEMORANDUM ADOPTING INITIAL REPORT AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE

The Plaintiff Harold Davis filed this lawsuit complaining of alleged deprivations of his constitutional rights. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Davis named three defendants in his lawsuit: Dr. Ken Kuykendall and officers Curtis Lawson and David Dixon. The Magistrate Judge conducted an evidentiary hearing on April 19, 2005, pursuant to Spears v. McCotter, 766 F.2d 179 (5th Cir. 1985). Following this hearing, the Magistrate Judge issued a Report recommending that Dr. Kuykendall be dismissed from the lawsuit. Davis filed objections to this Report on June 22, 2005.

The Court has conducted a careful *de novo* review of the Plaintiff's pleadings and testimony, the Report of the Magistrate Judge, and the Plaintiff's objections thereto. Upon such review, the Court has concluded that the Report of the Magistrate Judge is correct and that the Plaintiff's objections are without merit. It is accordingly

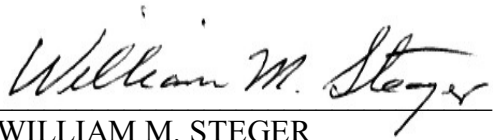
ORDERED that the Report of the Magistrate Judge (docket no. 9) is hereby ADOPTED as the opinion of the District Court. It is further

ORDERED that the Plaintiff's claims against Dr. Kuykendall be and hereby are DISMISSED as frivolous and that Dr. Kuykendall be and hereby is DISMISSED as a party to this lawsuit. This

dismissal shall have no effect upon the Plaintiff's claims against Officers Lawson and Dixon. It is further

ORDERED that the dismissal of Dr. Kuykendall shall not count as a strike for purposes of 42 U.S.C. §1915(g).

**SIGNED this 6th day of July, 2005.**

  
WILLIAM M. STEGER  
UNITED STATES DISTRICT JUDGE